

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1169 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MOTABHAI VASABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1169 of 2001
MR SANJAY M AMIN for Petitioners No. 1-2
MR. S.P. SEN, GOVERNMENT PLEADER for Respondents No. 1-2
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CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 10/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The petitioners are joint owners of the lands bearing Survey Nos. 133 Piki admeasuring 47 Acre 27 Gunthas situated at Village Chhadiyali, Taluka Sayla, District Surendranagar. Record of Rights being Village Form No. 6 is at Annexure-A.

2. It is the case of the petitioners that the Respondents - State Government wanted to construct a dam under the Dhoriyali - Bhogavo Irrigation Scheme in taluka Sayla of district Surendranagar. For that purpose different lands were acquired by them and the possession was also taken over. According to the petitioners the respondents took away possession of part of the aforesaid lands belonging to them in the year 1986, and remaining part of the land of the petitioners got submerged with the construction of the time. Record of Rights being Village Form No. 7 & 12 is at Annexure-B.

3. The grievance made by the petitioners in this petition is that, without following the procedure provided under the Land Acquisition Act (for short the "Act") they have obtained physical possession of the land belonging to the petitioners and have not paid any compensation so far, though number of occasions they have approached the respondents for due compensation; hence this petition.

4. It is prayed in this petition that, the action of the respondents taking away lands of the petitioners without following due procedure of law be declared illegal and the respondents be directed to either hand over vacant & peaceful possession of their lands in question together with the damages or to pay legal compensation as per the act for the damages suffered by them.

5. On 19-2-2000 Division Bench of this Court made rule returnable on 5-3-2000. On March 29, 2001 learned AGP Shri. Mukesh Patel appeared for the respondents and prayed for time to file reply to this petition, the time was granted upto 17-4-2001 and the matter was ordered to be listed on 19-4-2001. However, for some or the other reason, it was placed before this Bench only on 7-1-2002. On the request made by learned counsel for the parties, it was kept for today.

6. It may be stated that, so far no reply affidavit is filed by the respondents in this matter.

7. There is a controversy regarding possession of the land of the petitioners taken over by the respondents. According to learned AGP Shri. Sen, the possession still remain with the petitioners, however, he could not deny the fact that the land of the petitioners had already been submerged with the construction of the dam. It is a different matter that because of scanty rainfall for a particular time the land may not remain submerged, but that does not mean that the possession of the land remains with the petitioners. It all depends on the monsoon. If the monsoon is good then the land is bound to be submerged, which is not in dispute. Under the circumstances there is no question of granting the first prayer made by the petitioners to declare the action on the part of the respondents taking over parts of the land as illegal. There is also no question of directing the respondents to hand over vacant and physical possession of the land with damages. However, their prayer regarding compensation can be considered by this Court. If the land of the petitioners have already submerged with the construction of the dam, then, the question of taking over actual possession from the petitioners or not would not be of much importance. The fact remains that the petitioners are not in possession of the their land, which is already submerged in water.

8. Learned counsel Shri. Amin for the petitioners has annexed copy of the judgment & order dated 20-12-1999 passed by the Division Bench of this Court (Coram: M.R. Calla & P.K. Sarkar, JJ) passed in Special Civil Application No. 8500 and 8501 of 1999 and submitted that, this Court may also dispose of the present petition in terms of aforesaid order. However, it was submitted by Shri. Sen, learned AGP for the respondents that, the facts of that case was totally different. It was a land in Ahmedabad district whereas in the instant case the land is of Surendranagar district. In that case actual possession of the land was taken over, whereas in the instant case no such possession has been taken over; therefore the aforesaid judgment will have no application to the facts of the present case.

9. Whether this petition would be squarely covered by the aforesaid Division bench judgment of this Court or not, we would not like to go into that question. Because, in our considered opinion, when the petitioners have practically lost possession of their land, then, they cannot be at least deprived of their due compensation. In that view of the matter, we direct the petitioners to first approach the Collector, Surendranagar for reasonable compensation of the land. If they make such

an application within one month from today, then, learned Collector, Surendranager, shall consider their application and decide it as early as possible, and not less than three months from the date of receipt of the application. Learned Collector shall determine the amount payable to the petitioners, considering the compensation given to the adjacent owners of the lands acquired by the respondents.

10. With these observations and directions this petition is disposed of. Rule made absolute to the aforesaid extent. No order as to costs.

Dt: 10-1-2002 (B.J. Shethna, J) (N.G. Nandi, J)

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